

Message Text

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ARA/RPP - JOHN O'GRADY

S/NM - RICHARD DUGSTAD

JUSTICE - MURRAY STEIN (INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY SANTIAGO

C O N F I D E N T I A L STATE 021550

E.O. 11652: GDS

TAGS: SNAR, SHUM, CI

SUBJECT: EXPULSION/EXTRADITION OF CHILEAN NARCOTICS
TRAFFICKERS
REF: SANTIAGO 348

1. PROSPECTS FOR GOC AGREEMENT IN PRINCIPLE TO USE THE
AMENDING EFFECT OF THE 1961 SINGLE CONVENTION ON NARCOTIC
DRUGS, AS AMENDED, ON EXISTING U.S.-CHILEAN EXTRADITION
TREATY IS MOST ENCOURAGING AND DEPT CONCURS THAT THIS
IS THE PREFERRED MODE OF GAINING CUSTODY OF NARCOTICS
FUGITIVES.

2. INCLUSION OF REFERENCE TO "GENERAL PRINCIPLES OF LAW"
AND AN OFFER TO RECIPROCITY IN ANY REQUEST FOR EXTRADITION
COULD CREATE SOME FORESEEABLE PROBLEMS. THE REFERENCE
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TO GENERAL PRINCIPLES OF LAW PRESENTS NO PROBLEMS; HOWEVER,
RECIPROCITY WOULD BE SUBJECT TO LIMITATION IMPOSED BY U.S.
LAW. THE GOC WOULD HAVE TO UNDERSTAND THAT OUR LAW RE-
QUIRES ADJUDICATION BY A U.S. COURT AND IT IS NOT,
THEREFORE, EXCLUSIVELY WITHIN THE POWER OF THE EXECUTIVE
BRANCH. SHOULD A HEARING JUDGE RULE AGAINST THE EXTRADITION
WE WOULD BE FORECLOSED FROM DELIVERING OVER THE REQUESTED

FUGITIVE. THE SECRETARY OF STATE EXERCISES HIS AUTHORITY

ONLY AFTER THE COURT HAS CERTIFIED THE BONA FIDES OF THE EXTRADITION REQUEST. HE CAN, AT THAT POINT, EITHER AUTHORIZE THE DELIVERY OF THE REQUESTED FUGITIVE OR DECLINE TO DO SO. WE CAN ONLY COMMIT OUR INTENT TO CONSIDER A REQUEST FOR EXTRADITION AND SUPPORT FOR THE REQUEST. WE COULD NOT - REPEAT NOT - COMMIT THE USG IN ADVANCE TO GRANT A REQUEST FOR EXTRADITION. MOREOVER, WHILE 18 U.S.C. PARA 3184 PROVIDES THAT AT THE EXTRADITION HEARING, THE COURT DETERMINES THAT EVIDENCE IS "SUFFICIENT TO SUSTAIN THE CHARGE UNDER THE PROVISIONS OF THE PROPER TREATY OR CONVENTION," COURTS HAVE, IN PRACTICE, LOOKED BEYOND THE MERE SUFFICIENCY OF THE EVIDENCE. HUMAN RIGHTS ISSUES HAVE INFLUENCED SOME COURTS IN EXTRADITION REQUESTS AND THIS HAS COMPLICATED THE PROCEDURE, MAKING IT EVEN MORE DIFFICULT TO BE FORTHCOMING ON THE QUESTION OF RECIPROCITY. FOR THIS REASON ANY OFFER OF RECIPROCITY WOULD HAVE TO BE PHRASED IN TERMS OF THE USG WILLINGNESS TO ENTERTAIN A GOC REQUEST FOR EXTRADITION UNDER THE TERMS OF THE BILATERAL EXTRADITION TREATY AS AUGMENTED BY THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, AS AMENDED, SUBJECT TO REQUIREMENTS OF U.S. LAW.

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